

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

DEC 03 2013

at 4 o'clock and 25 min. P.M.
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Attorneys for Plaintiff

PATRICK LOWTHER, Individually and
behalf of all other similarly situated

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

PATRICK LOWTHER, individually
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

U.S. BANK N.A. and DOE
DEFENDANTS 1-50,

Defendants.

CASE NO. 1:13-cv-00235 LEK-BMK
(Class Action)

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTIONS FOR LEAVE TO
AMEND [DOC. 25 and DOC. 26]
FILED SEPTEMBER 20, 2013**

Hearing:

Date: November 14, 2013

Time: 3:00 p.m.

Judge: Hon. Barry M. Kurren

**ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S
MOTIONS FOR LEAVE TO AMEND [DOC. 25 and DOC. 26] FILED
SEPTEMBER 20, 2013**

On November 14, 2013 at 3:00 p.m., Plaintiff PATRICK LOWTHER's Motions for Leave To Amend filed September 20, 2013 [Docs. 25 and 26], came on for hearing in the above-captioned matter before this Court. James J. Bickerton, Esq. appeared for Plaintiff. Paul Alston, Esq. appeared for Defendant U.S. BANK. Having fully considered (i) Plaintiff's motions, memoranda, supporting declarations and proposed amended pleadings, (ii) Defendant's Opposition Memorandum filed October 24, 2013 [Doc. No. 30] and (iii) Plaintiff's Reply Memorandum filed October 31, 2013 [Doc. No. 31], and having reviewed the file and considered the positions of the parties presented before the Court on November 14, 2013, this Court hereby ORDERS AND DECREES as follows:

- A. Plaintiff is granted leave to file the Amended Complaint attached to its Motions for Leave to Amend; however,
- B. In doing so, Plaintiff shall revise the Amended Complaint to excise any allegations that the February 24, 2009 filing in the Hawai'i Bureau of Conveyances of the Assignment of Plaintiff's Mortgage is actionable under Hawaii Revised Statutes, Chapter 480, despite occurring more than four years before suit was commenced, based on the "continuing violation" theory, per the terms of the Order of Judge Kobayashi dated September 4,

2013 that dismissed Plaintiff's Chapter 480 claim based on the February 24, 2013 Bureau of Conveyances filing with prejudice to the extent it was based on a "continuing violation" theory. Should Defendant disagree with the scope of the excisions to the Amended Complaint proffered by Plaintiff, the Magistrate Judge shall hold a status conference with the parties to see whether further hearing and decision is necessary on the scope of the excisions required to remove any continued reliance by Plaintiff on the "continuing violation" theory to avoid the limitations bar.

DATED: Honolulu, Hawai'i, 12-3-2013.



Judge of the above-entitled Court

APPROVED AS TO FORM:



PAUL ALSTON
PAMELA W. BUNN
J. BLAINE ROGERS

Attorneys for Defendant U.S. Bank

Lowther v. U.S. Bank, Case No. 1:13-cv-00235-LEK-BMK, **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTIONS FOR LEAVE TO AMEND FILED [DOC. 25 and DOC. 26] FILED SEPTEMBER 20, 2013.**